

PRESS RELEASE

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Conyers: GOP Bill Would Punish Jesica Santilan's Family While Padding Pockets of Insurance Industry, HMO's and Medical Wrongdoers

Today, Congressman John Conyers, Jr., Ranking Member of the House Judiciary Committee and Dean of the Congressional Black Caucus, issued the following statement regarding tomorrow's Judiciary Committee hearing on medical malpractice:

"We're here today in anticipation of tomorrow's Judiciary Committee hearing on medical malpractice. The Bush Administration and the Republicans in the House have worked together to introduce a bill that pads the pockets of insurance companies, HMOs and the manufacturers and distributors of defective medical products and pharmaceuticals by placing draconian caps on pain and suffering damages and harming ordinary Americans .

Earlier this month we heard the voices of the victims that have largely been shut out of the process. Democrats believe it is critical that we permit the survivors of previous malpractice to explain first hand how these proposals would impact them.

We have with us today Kurt Dixon, the lawyer for the family of Jesica Santillan, the young girl who died after receiving the wrong organs from a heart and lung transplant operation at Duke University Hospital. This happened because neither the surgeon at Duke Hospital and the person at the organ bank checked to see if Jesica's blood type matched the blood type of the donor. As a result, Jesica, who had Type O blood, received organs with Type A blood. Mr. Dixon will speak extensively about Jesica's case tomorrow at the Judiciary Committee's hearing on medical malpractice.

But for now, let me just say that Mr. Dixon will have a tough road ahead of him if Congress passes President Bush's medical malpractice bill. This is because Mr. Dixon's clients--Jesica Santillan's family--would be subjected to a one-size-fits all cap of \$250,000 on their pain and suffering damages. Under North Carolina law, a jury of their peers would determine how much the Santillan family's pain and suffering is worth.

And this is not the only hurdle the Santillan family and Mr. Dixon will have to overcome. To impose punitive damages on the wrongdoers, Mr. Dixon and the Santillan's will have to prove that the defendants specifically intended to injure Jesica. In this case, those entrusted to care for Jesica did not even inquire into the donor's blood type. Even the hospital has called what happened a "critical failure." But under the bill proposed by the Republicans and the administration, the Santillans could not seek punitive damages for this clear example of gross negligence.

Beyond the blatant unfairness of the Republican proposals, they simply make no economic sense. The reason malpractice insurance premiums are rising is that investment income by insurance companies is plummeting. You don't have to be an economics major to understand that insurers make their money from investment income. During years of high stock market returns and interest rates, malpractice premiums go down. When investment income decreases – and we are in the middle of a four year bear market – the industry responds by sharply increasing premiums and reducing coverage, creating a 'liability insurance crisis. This boom-bust cycle took place in the 70's and 80's, and its happening again now.

In addition, draconian laws capping damages do not reduce insurance premiums. A comparison of states that have enacted severe tort restrictions and those that have not, performed by the Center for Justice and Democracy found no correlation between tort reform and insurance rates. Indeed, some of the resisting states experienced lower increases in insurance rates, while some states that enacted tort reforms experienced higher rate increases relative to the national trends. For example, last year's data showed that in the practice of internal medicine, states with caps on damages had higher premiums than states without caps. For general surgeons, insurance premiums were 2.3% higher in states with caps on damages. On average, malpractice premiums were no higher in the 27 States that have no limitations on malpractice damages, than in the 23 States that do have such limits.

Congress needs to take a deep breath before we pass this horrible medical malpractice bill."